

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

COY PHELPS, :
Plaintiff, : Case No. 3:12cv00344
vs. : District Judge Thomas M. Rose
Chief Magistrate Judge Sharon L. Ovington
RION MACCONNELL, *et al.*, :
Defendants. :

DECISION AND ENTRY

This matter is before the Court upon three Motions filed by Plaintiff. First, Plaintiff has filed a Motion to Strike Attorney's Counterclaim Request for Attorney Fees. (Doc. #18). Plaintiff's Motion arises in response to Defendant Rita MacConnell's Motion for Attorney Fees in which she requests "that the Plaintiff ... be ordered to pay her reasonable and customary attorney fees in the amount of \$5,000.00 or such an amount as this Court deems fair and just." (Doc. #17, PageID at 314). Plaintiff is not entitled to an Order striking Defendant Rita MacConnell's Motion for Attorney Fees because her Motion does not contain redundant, immaterial, impertinent, or scandalous matter. *See Fed. R. Civ. P. 12(f).* Although Plaintiff's Motion to Strike lacks merit, his Motion asserts arguments in opposition to Defendant Rita MacConnell's Motion for Attorney Fees. (Doc. #s 12, 18). Consequently, the Court will fully consider those arguments by Plaintiff when ruling on Defendant Rita MacConnell's Motion for Attorney Fees.

Second, Plaintiff has filed a Motion To Strike Defendant's Amended Answer and Amended Motion to Dismiss. (Doc. #19). Plaintiff contends that these materials should be stricken because Defendants' attorneys did not sign them. This, however, is incorrect. Defendants' counsel electronically signed and filed these documents as permitted by S.D. Ohio Civ. R. 83.5(c). (Doc. #16, PageID at 309). Plaintiff also argues that the Amended Answer and Amended Motion to Dismiss should be stricken because Defendants' attorneys failed to support their defenses with facts, evidence, arguments, or law. This contention is pertinent to whether Defendants' amended materials have or lack merit; it does not, however, establish that striking Defendants' amended materials is warranted. *See* Fed. R. Civ. P. 12(f). Plaintiff further maintains, "The amended answer is mostly redundant and repetitious of the previous motions to dismiss by the attorneys and which has already been argued and submitted to this court." (Doc. #19, PageID at 322). This contention appears to arise from the fact that Rita MacConnell filed a single document containing both an Answer and a Motion to Dismiss (Doc. #8), and later filed an Amended Answer and a separate Motion to Dismiss. (Doc. #s 15, 16). Although these later filings repeat the same or similar assertions raised in Defendant Rita MacConnell's earlier-filed Answer and Motion to Dismiss, no substantive ruling has yet been made in this case and Plaintiff will suffer no prejudice from allowing Defendant Rita MacConnell to file her Amended Answer and a separate Motion to Dismiss. Accordingly, Plaintiff's Motion to Strike Defendant's Amended Answer and Amended Motion to Dismiss lacks merit.

Next, the case is pending on Plaintiff's Motion To Allow The Plaintiff To Serve

Defendant Rion MacConnell With A Subpoena Ad Testificandum. (Doc. #20). Plaintiff seeks Rion MacConnell's testimony to support his opposition to Defendant Rita MacConnell's Motion to Dismiss. Such testimony is premature at this point in the case because Defendant Rita MacConnell's Motion seeks dismissal under Fed. R. Civ. P. 12(b)(6). When considering Rule 12(b)(6) Motions to Dismiss, the Court accepts Plaintiff's factual allegations as true and liberally construes his *pro se* Complaint in his favor. *See Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011). Consequently, Plaintiff does not need to provide evidence, such as Defendant Rion MacConnell's testimony, to support his opposition to Defendant Rita MacConnell's Rule 12(b)(6) Motion to Dismiss.

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's Motion to Strike Attorney's Counterclaim Request for Attorney Fees (Doc. #18) is DENIED;
2. Plaintiff's Motion To Strike Defendant's Amended Answer and Amended Motion to Dismiss (Doc. #19) is DENIED; and
3. Plaintiff's Motion To Allow The Plaintiff To Serve Defendant Rion MacConnell With A Subpoena Ad Testificandum (Doc. #20) is DENIED.

September 11, 2013

s/Sharon L. Ovington
Sharon L. Ovington
Chief United States Magistrate Judge